

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LEE V. QUILLAR,

Plaintiff,

No. CIV S-04-1203 FCD KJM P

vs.

CALIFORNIA DEPARTMENT OF  
CORRECTIONS, et al.,

Defendants.

ORDER AND

FINDINGS AND RECOMMENDATIONS

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Plaintiff is a state prisoner proceeding pro se with an action for violation of civil rights under 42 U.S.C. § 1983. On July 24, 2007 plaintiff filed a motion asking permission to seek discovery from defendants Murray and Mendoza. On August 6, 2007, defendants filed an opposition to the motion. Plaintiff's motion will be denied as defendants Murray and Mendoza have been dismissed from this action. See Order filed August 16, 2007 (docket no. 77).

Plaintiff has requested the appointment of counsel. The United States Supreme Court has ruled that district courts lack authority to require counsel to represent indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the court may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991);

1 Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). In the present case, the court  
2 does not find the required exceptional circumstances. Plaintiff's motion for the appointment of  
3 counsel will therefore be denied.

4 Finally, the court notes that on July 13, 2007, plaintiff was given 30 days within  
5 which to identify a specific party to substitute for defendant Rowlett, as defendant Rowlett is  
6 deceased. Plaintiff was warned that failure to comply with this order would result in denial of  
7 plaintiff's November 16, 2006 motion for substitution. The 30 day period has now expired and  
8 plaintiff has not complied with the court's July 13, 2007 order.<sup>1</sup> Plaintiff's November 16, 2006  
9 motion for substitution will be denied. Because there are no remaining defendants in this action,  
10 the court will recommend that this action be dismissed.

11 Accordingly, IT IS HEREBY ORDERED that:

12 1. Plaintiff's July 24, 2007 "motion for discovery" is denied;

13 2. Plaintiff's August 9, 2007 motion for the appointment of counsel is denied;

14 and

15 3. Plaintiff's November 16, 2006 motion for substitution is denied.

16 IT IS HEREBY RECOMMENDED that this action be dismissed.

17 These findings and recommendations are submitted to the United States District  
18 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty  
19 days after being served with these findings and recommendations, plaintiff may file written  
20 objections with the court. Such a document should be captioned "Objections to Magistrate

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25 <sup>1</sup> Plaintiff's July 24, 2007 motion for discovery appeared to contemplate seeking  
26 information on defendant Rowlett's successors. As noted above, given that the motion was directed  
to defendants who have been dismissed, it is being denied.

Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

DATED: August 22, 2007.

  
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U.S. MAGISTRATE JUDGE

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